srp.

HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4408 OF 2007.

Priyanka Mahesh Jangam,
Age: 18 years, Occu: Education,
1, Ramniketan Co-op. Housing
Society, Sarojini Nayadu Rd.,
Tambe Nagar, Mulund (West),
Mumbai - 80. ..Petitioner.

VERSUS.

1. The State of Maharashtra.
2. Divisional Caste Verification
Committee, Division Mumbai,
Kokan Bhavan, 5th Floor,
Navi Mumbai.
3. The Director of Education,
Maharashtra State, Mumbai.
4. STES Sinhgad College of
Engineering, 44/1 Vadgaon-Bk,
Pune 411041. ..Respondents.

Mr. J. G. Aradwad-Reddy for the petitioner.

Mr. C. R. Sonawane A.G.P. for the State.

CORAM: S. B. MHASE &
D.G.KARNIK,JJ.
DATE: AUGUST 28, 2007.

ORAL JUDGMENT (PER D.G.KARNIK,J.)

1. By this petition the petitioner challenges the decision of respondent no.2 - Caste Certificate Verification Committee, Kokan Vibhag, Mumbai (for short, "the Scrutiny Committee") dated 8th December 2006 invalidating the caste certificate of the petitioner as belonging to Beda-Jangam - a scheduled caste under the Presidential notification.

2. The documents, copies of which are annexed to the petition disclose that in the school register, the caste of the paternal grandfather of the petitioner, namely Kashinath Mallikarjun Jangam, is shown as "Lingayat". He was born on 15th January 1929 and left the school in the year 1949 studying upto 7th standard. This is the oldest document on record which shows the caste of the petitioner's grandfather to be "Lingayat". The school leaving certificate of the petitioner's father, namely Mahesh Kashinath Jangam, also records his caste to be Hindu-Lingayat He was admitted to the school in the year 1979. Thus, the documentary evidence about the caste of the petitioner's father and petitioner's grand father is that they belong to the Hindu Lingayat caste.

3. Learned counsel for the petitioner however invited our attention to the report of the Vigilance Cell which has reported that as per the home visit and verification of the custom, the petitioner belongs to Beda-Jangam caste. Relying upon the decision in the matter of **Madhuri Patil v/s. Addl. Commissioner, Tribal Development reported in 1994 AIR SCW 4116,** the learned counsel for the petitioner contended that the Vigilance Cell Report is conclusive and no other evidence to contradict favourable Vigilance Cell Report can be looked at. In particular he invited our attention to paragraph 13(7) of the said decision, which reads thus:

> "7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged is para-6 be followed."

4. These observations must be read in the context in which they are made and other observations in the decision. The decision notices that sometimes, and especially when the parents are illiterate, evidence regarding school entries or other documentary evidence may not be available. In such cases the caste / tribes claim of the person concerned cannot be ignored as he does not have documentary evidence. In such cases the Vigilance Cell report, if favourable to the claimant would be accepted, except where the report or particulars given are procured or found to be false or fraudeulently obtained. It is in this context the Apex Court held that mere absence of documentary evidence about the caste would not be ground to reject the caste claim of a person in such circumstances when the vigilance cell report was favourable to the claimant. It must be noted that the Apex Court has also observed that when the report was procured or found to be false or fraudulent, other procedure can be followed.

5. In our view where the documentary evidence

is absent, the report of the vigilance cell assumes great importance for the purpose of deciding the issue but does not mean that even in a case where the documentary evidence is deliberately withheld being likely to be adverse or is contrary to the claim made by the petitioner, such documentary evidence is to be ignored altogether. That evidence can and must be looked at to find out whether the vigilance cell report is procured or false. In the present case the documentary evidence clearly shows the caste of the petitioner to be "Lingayat".

6. Learned counsel for the petitioner then invited our attention to the decision in **Sarngappa v/s the State of Maharashtra reported in 2002(3) Mh.L.J. 290** rendered by one of us (D.J. Karnik,J.) sitting singly. Decision of the Constitution Bench of the Supreme Court in State of Maharashtra v/s. Milind reported in (2001) 1 SCC 4 was not brought to the notice of the Single Judge deciding Snrangappa’s case. In Milind’s case the Supreme Court has held that an entry in the Presidential Order listing scheduled castes or scheduled tribes must be read as it is and it is not permissible for the Court to say that a tribe, sub-tribe, or a part of a group or tribe or a tribal community is synonymous to the one mentioned in the Presidential Order, if it is not specifically mentioned in it. If this decision would have been

brought to the notice of the Single Judge, the decision would have been otherwise. In any event, in view of the decision of the Supreme Court, we over-rule the decision of the Single Judge in Saranagappa v/s. State of Maharashtra.

7. In the circumstances, we see no merit in the petition which is hereby rejected.

(D.G.KARNIK, J.) **(S.B.MHASE, J.)**